

ARKANSAS SUPREME COURT

No. CR 02-1284

JOHN D. MARTIN
Petitioner

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION and
STATE OF ARKANSAS
Respondents

Opinion Delivered June 7, 2007

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR CORAM NOBIS [CIRCUIT
COURT OF POPE COUNTY, CR 2001-
157, HON. DENNIS CHARLES
SUTTERFIELD, JUDGE]

PETITION DENIED.

PER CURIAM

Petitioner John D. Martin was found guilty by a jury of rape, first-degree violation of a minor, and third-degree carnal abuse, and received an aggregate sentence of 168 months' imprisonment in the Arkansas Department of Correction. We affirmed. *Martin v. State*, 354 Ark. 289, 119 S.W.3d 504 (2003). Subsequently, appellant filed a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and we affirmed. *Martin v. State*, CR 04-946 (Ark. Nov. 10, 2005) (per curiam).

Now before us is petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.¹ The petition to reinvest jurisdiction in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis after

¹For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

Here, petitioner alleges that the prosecutor withheld a transcription of the victim's taped interview by an investigator with the Arkansas State Police. He claims that the prosecutor's actions are in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and constitute a basis for a writ of error coram nobis.

A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam).

Further, for the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error coram nobis is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005) ("*Echols Error Coram Nobis IP*" or "*Echols ECN IP*"); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975).

In the instant matter, petitioner's trial counsel had knowledge of the transcript, as he

introduced a page from it into the record at trial. Although petitioner alleges that trial counsel withheld the transcript from him, thus preventing his knowledge of it, petitioner was present at the trial, and at the time trial counsel introduced the exhibit. Thus, the existence of the transcript could not be considered a fundamental error of fact extrinsic to the record, or hidden or unknown at trial. *Larimore, supra; Echols ECN II, supra.*

In the petition, appellant also claims that this same conduct of trial counsel rose to the level of ineffective assistance of counsel. The issue of counsel's effectiveness is one to be addressed pursuant to Rule 37.1. Claims of ineffective assistance of counsel are outside the purview of a coram nobis proceeding. *McArty v. State*, 335 Ark. 445, 983 S.W.2d 418 (1998) (per curiam).

Finally, petitioner asks that physical evidence obtained by the police be tested for the DNA of various persons. Act 1780 of 2001, as amended by Act 2250 of 2005, and codified as Ark. Code Ann. §§16-112-201–207 (Repl. 2006), provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. A petition for writ of habeas corpus under Act 1780 is properly filed in the court in which the conviction was entered, and not in this court. Section 16-112-201(a).

In a petition for writ of error coram nobis, it is the petitioner's burden to show that the writ is warranted. Here, petitioner has failed to make a showing that the allegations contained in his petition are meritorious or are grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis. As no substantive basis exists for granting the petition, we need not reach the issue of whether petitioner exercised due diligence in filing this petition. We deny the petition to proceed with a petition for writ of error coram nobis.

Petition denied.